IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1619 of 2005
In
SPECIAL CIVIL APPLICATION No. 3573 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANANTRAI GORDHANDAS JETHWA ASSTT.OPERATOR GRADE-1 - Appellant(s)

Versus

GUJARAT ELECTRICITY BOARD - Respondent(s)

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Appearance :
MR TR MISHRA for Appellant(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 29/11/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

The appellant – petitioner has challenged, in this appeal, the judgment and order dated 10th October, 2005

passed by Miss R.M. Doshit, J. dismissing his Special Civil Application No.3573 of 2005 on two grounds that (1) when he applied for correcting his birth-date in his service record, he had already crossed the age of 50 years, and, therefore, his application could not be considered by the respondent- Board and (2) when he applied for appointment as per his other birth-date, he was minor i.e. below 18 years.

2. Learned counsel Shri Mishra for the appellant vehemently submitted that the learned Single Judge was wrong in dismissing his writ petition on the ground that in 1999, the petitioner had already crossed the age of 50 years, therefore, his application for correction of birth-date in the service record could not be accepted. He submitted that as per the original service record of the appellant, his birth-date was recorded as 20th May, 1945 in the service record and for the first time, he submitted his application on 6th March, 1992 for correcting his age. At that time, he was 47 plus. If this was the only ground for rejection of the writ petition by the learned Single Judge, then we would have considered the case of the appellant – petitioner. However, as stated earlier, one more ground for dismissal

assigned by the learned Single Judge was that as per his another birth-date i.e. 15th October, 1948, which he claimed to be the correct one as per the School leaving Certificate, he was below 18 years of age for the post of Helper in 1966. No minor can be appointed in any Government post or semi-Government body who has not completed the age of 18 years. Therefore, there is no question of interference with the order passed by the learned Single Judge. However, learned counsel Shri Mishra for the appellant vehemently submitted that the appellant may not be 18 years old when he applied on 1st October, 1966 but when he was appointed on 11th February, 1967, he had already completed the age of 18 years as per his correct birth-date i.e. 15th October, 1948. There is no force in this submission. If the appellant had mentioned 15th October, 1948 as his birth-date in his application form dated 1st October, 1966, then straightaway, his application would have been rejected as he was minor at that time and he would not have been called for the interview and selected. It appears that for getting employment, he has shown his birth-date as 20th May, 1945 and having obtained the job, at the time of retirement, he applied for correcting his birth-date on the duplicate School Leaving Certificate. When his

application was rejected by the respondent – Board, then he approached this court just few months before his retirement from service i.e. in March, 2005 by way of writ petition, when he was about to retire in October, 2005.

3. Before parting, we may also state that as per the case of the appellant himself, for the first time he made the representation to the respondent – Board for correcting his birth-date on 6th March, 1992 (Annexure 'A' to the main writ petition). When he was informed in 1999 that his application for correcting the birth-date cannot be accepted, then again he made a representation dated 29th December, 1999 to the respondent – Board (Annexure 'B'). On 11th August, 2001, he had made another representation for correcting his birth-date (Annexure 'E'). By a letter dated 5th July, 2002, the appellant was once again informed that his case cannot be considered in view of the revised Rule No.18 (Annexure 'D'). Even thereafter, he did not do anything and at the verge of his retirement in 2005, once again he submitted another application dated 11th February, 2005 for correcting his birth-date which was rejected on 21st February, 2005 (Annexure 'G') wherein it is stated that he had even

accepted 90% C.P.F. final settlement before one year of his retirement from the Board and that he himself has signed the Service Book and stated in it that his birth-date was 20th May, 1945.

4. From the above, it is clear that at the time of getting job, he himself had mentioned his birth-date as 20th May, 1945 and in the last year of his retirement i.e. in 2005 prior to it he had already accepted 90% C.P.F. final settlement which was to be given before one year of his retirement from the Board and thereafter, in the month of March, 2005, he has approached this court by way of writ petition. Thus, it is clear that for the first time in 1992, he had applied for correcting his birth-date and thereafter did not do anything for a long period of more than 7 years. When in 1999, he was told that his application cannot be accepted then, again for a period of 3 years, he did not do anything. When in 2002, he was told that his application cannot be accepted then once again he did not do anything for a period of three years and after accepting 90% C.P.F. final settlement in the last year of his retirement i.e. in 2005, and when his application was rejected, then, for the first time, he approached this court by way of writ petition. Thus, his

petition was also suffering from the vice of gross delay and laches. Repeated representations do not furnish a fresh cause of action as held by the Hon'ble Supreme Court in the case of **STATE OF HARYANA AND OTHERS vs. AJAY WALIA (Ms) reported in (1997) 6 SCC Page 255**. Thus, on this ground also, his appeal and petition were required to be dismissed.

5. In the case of **STATE OF PUNJAB AND OTHERS vs. S.C. CHADHA reported in (2004) 3 SCC Page 394**, the Hon'ble Supreme Court had held that before issuing any direction to the authority for correcting the birth-date, the court or the Tribunal has to be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. At the cost of repetition, we may state that for getting the job, he had mentioned his birth date as 20th May, 1945. If he was actually born on 15th October, 1948, then when he applied on 1st October, 1966 lawfully, he was not eligible because he was below 18. Thus, a person who got the benefit of his own wrong is not entitled to double benefits of retirement in service.

In view of the above discussion, this appeal fails and is hereby dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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